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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,668	08/16/2001	Andrew Michael Pelletier	GEMS:0055--I/YOD 31-PN-62	3806
7590	01/06/2004		EXAMINER	
Patrick S. Yoder Fletcher, Yoder & Van Someren P.O. Box 692289 Houston, TX 77269-2289			BOCKELMAN, MARK	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 01/06/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/931,668	PELLETIER ET AL. CJ
	Examiner Mark W Bockelman	Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 September 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 16-19,21-32 and 34-44 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 16-19,21-32 and 34-44 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \*    c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 28-32, 34-35, 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frid et al USPN 5,857,967 (alone or alternatively in view of Gat USPN 5,954,663) in further view of Bates et al. USPN 5,907,681. Frid teaches the use of a general purpose network uses a browser and HTML files (web page) of electrocardiograms such that entrance at a remote cite may be had by requesting clients using a configurable network link (URL). The files are created with the aid of an ecg recorder and may update the displayed page in realtime (see column 4 lines 26-37). Although the device is not stated as being used for a fetal ecg system, the term fetal is merely an intended use in applicant's claims and the ecg monitor of Frid is capable of being attached to any patient including that of an expecting mother. Alternatively, it would have been obvious to use or convert the Frid system for use with an expectant mother as in the Gat system which accomplishes the same task as Frid but with a dedicated computer system.

Applicant differs in providing a means for choosing between realtime mode in which data is automatically updated or historical mode wherein the data is not updated. Such a feature is

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common on network browsers in the form of an auto refresh selector that can be selected to update available website data or turned off such that no such updating and therefore only historical data is transmitted. The examiner refers applicant to column 1 lines 20-30 of Bates et al USPN 5,907,681. To have included the conventional browser as described by Bates or alternatively the advancement by Bates for his reasons would have been obvious to one of ordinary skill in the art since such variations were well known in the internet browser art at the time of applicant's invention.

3. Claims 16-19, 21-27 and 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frid et al USPN 5,857,967 in view of Gat USPN 5,954,663 and Bates et al. USPN 5,907,681

As noted above Frid et al uses the same system as applicant for recording and accessing ecg's. Applicant differs in his methods by recording the ecg's for expecting mothers. To have implemented the Gat sensors into the Frid et al system, or to have alternatively applied the Frid internet system to the Gat device for the specific advantages taught over Gat type systems would have been obvious. Retransmission of the updated data would be accomplished in the realtime update provided by Frid. Such real time implementations on the internet have been well known prior to applicant's effective filing date. It was also well known at the time of the invention to update the page by refreshing it and retransmitting new data that is not updated to the client in real time.

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Applicant differs in providing a step of choosing between historical mode or realtime transmission of data which is considered obvious in view of Bates USPN 5,907,681 for identical reasons as those provided in item 2. as stated above.

4. Applicant's arguments with respect to claims 16-19, 21-32 and 34-44 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Bockelman whose telephone number is (703) 308-2112. The examiner can normally be reached on Monday through Friday from 9:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3591.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

MWB

January 5,2004



MARK BOCKELMAN  
PRIMARY EXAMINER